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10/21/2003 11:01 916-557-7855
05/22/02 10:48 FAX 831 848 2521

USACE REAL ESTATE

PAGE 02
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WHEN RECORDED MAIL TO:

Dept. of Toxic Substances Control
Northern California Region
8600 Cal Center Drive
Sacramento, CA 95826-3200
Attn: Anthony J. Landis, P.E.

CERTIFIED COPY OF
ORIGINAL DOCUMENT
STEWART TITLE

MAY 22 2002

Time: 8:00 A.M.
Series #2002048597

THIS SPACE FOR RECORDER'S USE ONLY

TITLE OF DOCUMENT

**COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION**

RECORDING REQUESTED BY:

U. S. Army Corps of Engineers
Real Estate Division, ATTN: CESP-K-RE-MC
1325 J Street
Sacramento, CA 95814-2922

W E N RECORDED. MAIL TO:

Department of Toxic Substances Control
Northern California Region
~~10151 Croydon Way, Suite #3~~ 8800 Cal Center Drive, SACRAMENTO, CA
ATTN: Anthony J. Landis, P.E. Chief Office of Military Facilities
Sacramento, CA 95827-3200

(Space Above This Line For Recorder's Use Only)

**COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION**

Re: **A** Portion of the former Fort Ord installation lies within a "Groundwater Protection Zone" as defined by Monterey County Ordinance 04011, shown as Exhibit A. Use of groundwater is prohibited on the Property described below.

This Covenant, and Agreement ("Covenant") is made by and among The United States of America acting by and through the United States Army (also referred to herein as the "Covenantor"), the current owner of the herein described real property located in the County of Monterey, State of California, shown on Exhibit "B" and described in Exhibit "C", attached hereto and incorporated herein by this reference (the "Property"), and the State of California acting by **and** through the Department of Toxic Substances Control ("Department"), and the Central Coast Regional Water Quality Control Board (Regional Water Board).

The Department and the Regional Water Board also wish to expedite the transfer of this property to the Fort Ord Reuse Authority (FORA), California State University Monterey Bay (CSUMB), University of California Monterey Bay Education, Science & Technology Center (UCMBEST), Monterey Salinas Transit, and the State of California Youth Hostel pursuant to the "early

transfer” requirements of the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA” 42 USCA section 9601 et seq.) section 120(h). All of the Fort Ord facility is subject to the requirements of CERCLA.

Pursuant to California Civil Code section 1471(c), the Department and the Regional Water Board have determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence of hazardous materials, as defined in the California Health and Safety Code (“H&SC”) section 25260(d), in the groundwater and the soil, and to protect waters of the state in accordance with California Water Code Division 7.

The United States Army intends to transfer the Property to Fort Ord Reuse Authority (FORA), California State University Monterey Bay (CSUMB), University of California Monterey Bay Education, Science & Technology Center (UCMBEST), Monterey Salinas Transit, and the State of California Youth Hostel. As a part of that transfer, the United States Army will impose separate deed restrictions on the Property, which will be similar to the restrictions contained in this Covenant.

The Covenantor and the Department and the Regional Water Board, collectively referred to as the “Parties” hereby agree that the use of the Property will be restricted as set forth in this Covenant.

ARTICLE I

STATEMENT OF FACTS

1.01 The Property, totaling approximately 767 acres is more particularly depicted in Exhibit “B” and described in Exhibit “C”. The Property is located on the former Fort Ord, California.

1.02 The Covenantor has conducted a remedial action to remove contaminated soil and substances at the Property under the supervision and authority of the Department, the Regional Board and the United States Environmental Protection Agency (U.S. EPA). The remaining contamination of the Property is in the underlying groundwater. This groundwater exists in two aquifers, the “A”, the uppermost aquifer, and the “180 foot” aquifer, which is directly beneath the “A” aquifer. These aquifers are separated by a clay layer in some areas, and are contiguous in other areas. Groundwater in these aquifers is contaminated with volatile organic compounds (VOCs), primarily trichloroethene (TCE), associated with Operable Unit 2 (OU2). OU2 is the Former Fort Ord Landfill located east of 12th Street and south of Imjin Road. Pursuant to the Fort Ord Federal Facility Agreement, signed by the Parties in 1990 in which the Army agreed to complete the cleanup at Ft. Ord, a Record of Decision (ROD) for OU2 was signed on 23 Aug 1994. The contaminated plumes underlying the Property are undergoing extraction and treatment pursuant to the OU2 ROD. A separate area of groundwater, contaminated with carbon tetrachloride, was recently discovered in both the “A and “180 foot” aquifers. The carbon tetrachloride plume was discovered in summer 2000. Additional monitoring wells to further

define the plume limits are planned. The Army, the Department, the Board and USEPA will sign a ROD documenting the decision on remedial action. Monterey County has enacted an ordinance that prohibits pumping and use of the groundwater in this area. (Attached as Exhibit "A"). The "Groundwater Protection Zone," as defined in that ordinance is also used herein.

1.03 The groundwater underlying the Property is contaminated with volatile organic compounds (VOCs), primarily trichloroethene (TCE), and 1,2-Dichloroethane, as shown below in paragraph 1.04 associated with OU2. These compounds exist at concentrations greater than the Aquifer Cleanup levels (ACL) in Operable Unit 2 ROD. The ACLs in these RODs were set at or below both State and Federal Maximum Contamination Levels, found in both 40 CFR Part 141 and/or Title 22 California Code of Regulations (CCR) Section 64444. The ACL for the carbon tetrachloride plume has not been established.

1.04 The maximum estimated concentration of TCE in the groundwater beneath the Property is 36 ug/L, and the maximum estimated concentration of 1,2-Dichloroethane is 47 ug/L. (Parcel E4.3.1). The concentrations of chemicals of concern frequently detected in the groundwater plume associated with OU2, as of June 2000, are listed in the table below; the quantity released of these compounds is unknown. The maximum detected concentration in the carbon tetrachloride plume is approximately 15 ug/L. The State Maximum Contaminant Level is 0.5ug/L.

Chemical Name	Regulatory Synonym	Concentrations (ug/l)	ACL
1,1-Dichloroethane	Ethane, 1,1-dichloro	47	5.0
1,2-Dichloroethane	Ethane, 1,2-dichloro	5	0.5
Cis-1,2-Dichloroethene	Ethene, 1,2-dichloro(E)	24	6.0
1,2-Dichloropropane	Propane, 1,2-dichloro	2	1.0
Chloroform	Methane, trichloro	5	2.0
Tetrachloroethene	Ethene, tetrachloro	15	3.0
Trichloroethene	Ethene, trichloro	36	5.0
Vinyl chloride	Ethene, chloro	1	0.1

1.05 A pump-and-treat groundwater remediation system located near the corner of 12th Street and 3rd Avenue for OU2 is in place and shown to be operating effectively. This system extracts water from the contaminated "A" aquifer and the "180 foot" aquifer, removes contaminants by means of granular activated carbon (adsorption), and recharges the treated water back into either the "A" or 180-foot aquifers. Locations of extraction and recharge wells are shown on the Plate at Exhibit

B. The Army has received concurrence from the U.S. EPA (4 January 1996) that the pump-and-treat system for remediation of the OU2 groundwater plume, is in place and operating "properly and successfully". Since 1996, additional groundwater contamination has been discovered in the A and 180-foot aquifers associated with OU2, which the existing pump-and-treat system was not able to capture and treat. The Army has designed and has constructed an expansion to the existing OU2 pump-and-treat system. The Parties believe this expansion will successfully capture and treat the additional contamination. As stated in 1.02 above, the remedial action for the carbon tetrachloride plume has not yet been determined by The Army, the Department, the Board and USEPA .

ARTICLE II

DEFINITIONS

2.01 Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02 Regional Water Board. "Regional Water Board" means the California Regional Water Quality Control Board, Central Coast Region, and includes its successor agencies, if any.

2.03 Water Agency. "Water Agency" means the Monterey County Water Resources Agency

2.04 Health Department. "Health Department" means the Monterey County Environmental Health Department

2.05 Covenantor. "Covenantor" means the United States of America acting through the United States Army.

2.06 Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III

GENERAL PROVISIONS

3.01 Restrictions to Run with The Land. This Covenant sets forth protective provisions,

covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and relevant portions shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Health and Safety Code sections 25222.1, and 25355.5(a)(1)(c), and Civil Code section 1471; (b) inures to the benefit of the Department and the Regional Water Board and passes with each and every relevant portion of Property; (c) is for the benefit of and is enforceable by, the Department, and the Regional Water Board; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding upon Owners/Occupants. Pursuant to Health and Safety Code section 25222.1 and 25355.5(a)(1)(C) and Civil Code section 1371, this Covenant binds all Owners and Occupants of the Property, and their heirs, successors, and assignees, and agents, employees, and lessees. Pursuant to Civil Code section 1471(b), all successive owners and occupants of the Property are expressly bound hereby for the benefit of the Department, and the Regional Water Board.

3.03 Written Notice of Release of Hazardous Materials. Prior to the sale, lease or sublease of the Property, of any portion thereof, or the execution of a license or easement on the Property, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous materials are located beneath the Property as required by Health and Safety Code section 25359.7.

3.04 Accompaniment to Deeds and Leases. This Covenant shall accompany all deeds and leases, for any portion of the Property.

3.05 Conveyance of Property. The Owner shall notify the Department, the Regional Water Board, the Water Agency, and the Health Department not later than thirty (30) days after executing any document conveying any ownership interest in the Property (excluding short-term rentals and leases, mortgages, liens, and other non-possessory encumbrances). None of the above agencies shall have, by reason of this Covenant, authority to approve, disapprove, or otherwise affect any proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV

RESTRICTIONS

4.01 Prohibited Activities. The following activities are prohibited on the Property without the prior review and written approval of the Army, the Department, and the Regional Water Board:

- (a) Construction of groundwater wells for injection or extraction and utilization, or consumption of any groundwater within the boundary of the Property, and
- (b) Any other activity on the Property that would interfere with or adversely affect the groundwater remediation system on the Property or result in the creation of a groundwater recharge area (e.g., unlined surface impoundments or disposal trenches). Normal landscaping and irrigation activities within the Property including routine irrigation practices are not prohibited activities.

4.02 Notification of Discovery of Activities Affecting Groundwater Systems. The Owner or Occupant shall notify the Department, the Regional Water Board, the Water Agency, the Health Department, U.S. EPA, and the Covenantor of the discovery of any activities conducted by the Owner or Occupant interfering with or adversely affecting any groundwater extraction, treatment, or monitoring installation for the Property. The Owner or Occupant shall provide the notification in accordance with section 7.04 within seven (7) working days after the discovery of the activity and shall include information regarding the type of activity, date of the activity, and location of the activity on the Property.

4.03 Access. The Department, the Regional Water Board, U.S. EPA, and Covenantor, its contractors and agents shall have reasonable right-of-entry and access to the Property for inspection, monitoring, testing, sampling, installation and monitoring of remedial systems, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department, the Regional Water Board, U.S. EPA and the Covenantor in order to protect the public health and safety or the environment and oversee any required activities.

ARTICLE V

ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department or the Regional Water Board to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas, water wells, and surface impoundments constructed or placed upon any portion of the Property in violation of the Restrictions). Violation of this Covenant shall be grounds for the Department or the Regional Water Board to file civil or criminal actions as provided by law.

ARTICLE VI

VARIANCE, TERMINATION AND TERM

6.01 Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233. The Department shall receive the concurrence of the Regional Water Board before any such variance is effective.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234. The Department shall receive the concurrence of the Regional Water Board before any such termination is effective.

6.03 Term. Unless ended in accordance with the termination paragraph above, by law, or by the Department and the Regional Water Board in the exercise of their discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 State of California References. All references to the State of California, the Department, and the Regional Water Board include successor agencies/departments or other successor entity(ies) and delegated agencies.'

7.03 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Monterey within ten (10) days of the Covenantor's receipt of a fully executed original and prior to transfer of the Property from the United States Army to another owner.

7.04 Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3)

business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Covenantor: Commander, DLIFLC and POM
ATTN: ATZP-CDR
Presidio of Monterey, CA 93944-5006

To Department: Anthony J. Landis, P.E.
Chief Northern California Operation
Office of Military Facilities
Department of Toxic Substances Control
~~10151 Croydon Way, Suite 3~~ *8800 Cal Center or-*
Sacramento, CA *95826*

To Regional Water Board: Mr. Roger Briggs
Executive Officer
California Regional Water Quality Control Board,
Central Coast Region
81 Higuera Street, Suite 200
San Luis Obispo, CA 93401-5427

To U.S. EPA: ~~Mr. Daniel Meier~~ *Ms. Debbie Jordan*
Chief, Federal Facilities Cleanup Branch
Superfund Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

To Water Agency: Mr Curtis Weeks
Monterey County Water Resources Agency
893 Blanco Circle
Salinas, CA 93901

To Health Department: Mr. Walter Wong
Monterey County Environmental Health
1270 Natividad Road
Salinas, CA 94948.

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 Partial Invalidity. If any provision of this Covenant is determined by a court of competent

jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Attachments. All attachments referenced in this Covenant are deemed incorporated into this Covenant by reference.

7.07 Section Headings. The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

7.05 Statutory References. All statutory references include successor provisions.

7.09 Representative Authority. The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

{Signatures follow}

4/02 10:50 FAX 831 849 2521

IN WITNESS WHEREOF, the COVENANTOR has caused this Covenant to be executed in its name by the Deputy Assistant Secretary of the Army for Installations and Housing and the Seal of the Department of the Army to be hereunto affixed this 9th day of May, 2002.

DEPARTMENT OF THE ARMY

Joseph W. Whitaker

Deputy Assistant Secretary of the Army for Installations and Housing

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA)
)ss
COUNTY OF ARLINGTON)

I, the undersigned, a Notary Public in and for the Commonwealth of Virginia, County of Arlington, whose commission as such expires on the 36th day of November, 2002, do hereby certify ~~that~~ on this day personally appeared before me in the said Commonwealth of Virginia, County of Arlington, Joseph W. Whitaker, Deputy Assistant Secretary of the Army for Installations and Housing, whose name is signed to the foregoing instrument and acknowledged the foregoing instrument to be his free act and deed, dated the 9th day of May, 2002, and acknowledges the same for and on behalf of the UNITED STATES OF AMERICA.

Given under my hand this 9th day of May 2002.

Vern A. Cooper
NOTARY PUBLIC

IN WITNESS WHEREOF, the DEPARTMENT OF TOXIC SUBSTANCES CONTROL,
STATE OF CALIFORNIA has caused these presents to be executed on this 30 day of
JANUARY, 2002, by Branch Chief Office of Military Facilities
(Title)

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Anthony N Landis

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)ss
COUNTY OF SACRAMENTO)

I, the undersigned, a Notary Public in and for the State of California, County of Sacramento,
whose commission as such expires on the 29th day of September, 2005 do hereby certify that
on this day personally appeared before me in the said State of California, County of Sacramento,
Anthony John Landis, whose name is signed to the foregoing document dated
the 30 day of January, 2002, and acknowledges the same for and on behalf of the
Department of Toxic **Substances** Control.

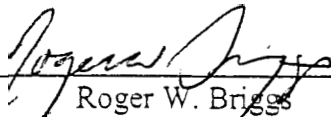
Given under my hand this 30th day of January, 2002.

Betty J. Engle
NOTARY PUBLIC



IN WITNESS WHEREOF, the CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD, STATE OF CALIFORNIA has caused these presents to be executed on this 14th day of January, 2002, by Executive Officer (Title)

CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD



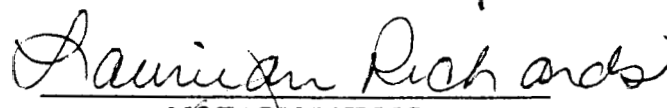
Roger W. Briggs
California Environmental Protection Agency
Executive Officer
California Regional Water Quality Control Board, Central Coast

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)ss
COUNTY OF ~~SACRAMENTO~~)
San Luis Obispo

I, the undersigned, a Notary Public in and for the State of California, County of San Luis Obispo, whose commission as such expires on the 13 day of June, 2003, do hereby certify that on this day personally appeared before me in the said State of California, County of San Luis Obispo, Roger W. Briggs, whose name is signed to the foregoing document dated the 14 day of January, 2002, and acknowledges the same for and on behalf of the Department of Toxic Substances Control.

Given under my hand this 14th day of January, 2002



NOTARY PUBLIC

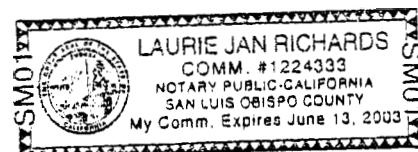
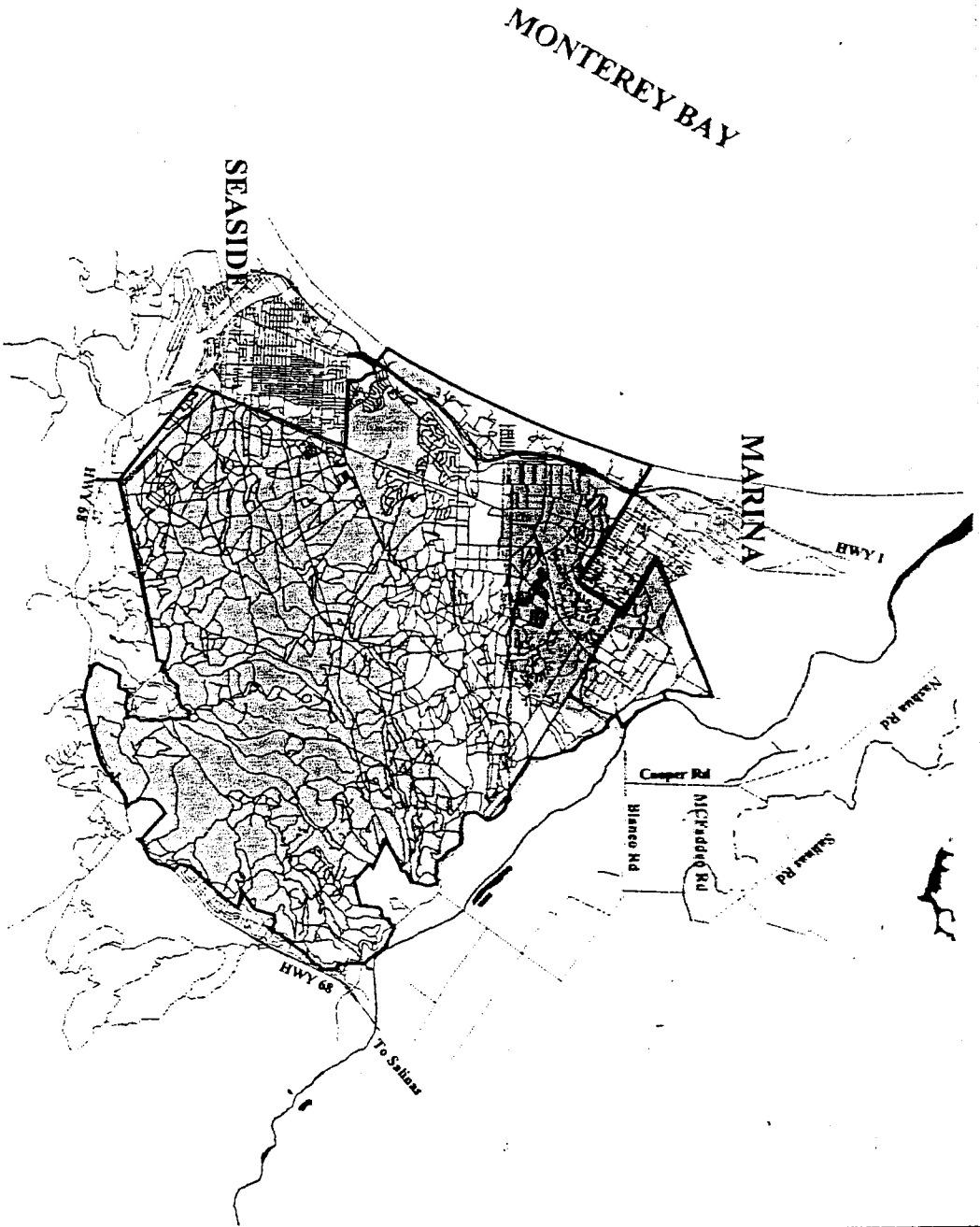


EXHIBIT "A"

Monterey County ordinance which prohibits pumping and use of the groundwater and defines the "Groundwater Protection Zone".

EXHIBIT A



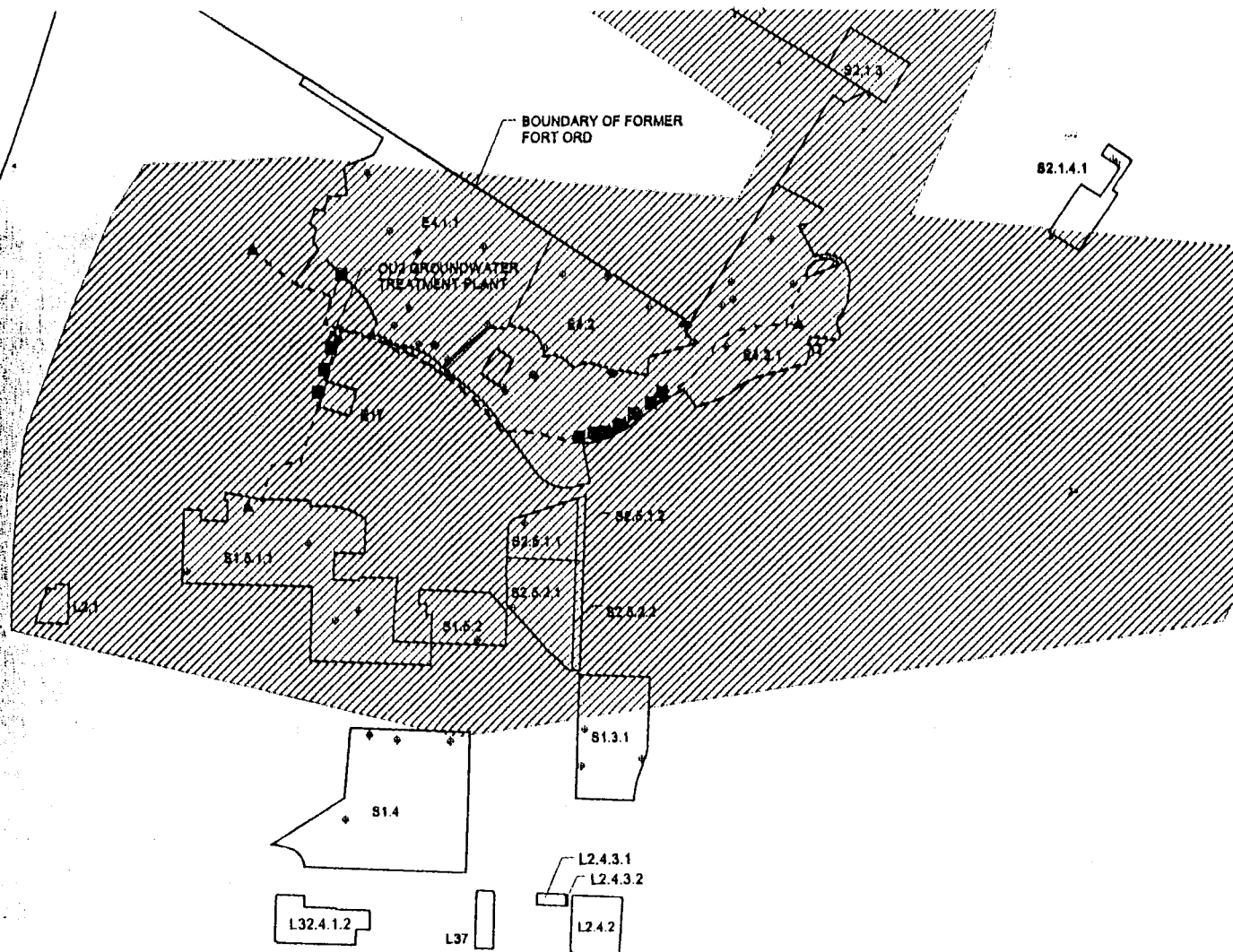
Special Groundwater Protection Zone Map
Former Fort Ord Area
Monterey County, California
Planning ISE: 1

EXHIBIT "B"

Plates showing Groundwater Protection Zone, Parcels to be restricted by this covenant, and locations of extraction and recharged wells.

EXHIBIT B

Monterey Bay



EXPLANATION

- Not Part of this Transfer
- Transfer Parcels
- Treatment System Piping
- Extraction Well Location
- Injection Well Location
- Monitoring Well Location

Groundwater Prohibition Zone*

* Construction of wells is prohibited due to the presence of organic contaminants at concentrations exceeding state and federal guidelines and to prevent interference with ongoing remedial activities



1500 0 1500 Feet



Exhibit B - Groundwater Prohibition Zone
Housing Areas and Former Garrison Parcels FOBET
Former Fort Ord
Monterey, California

DRAWN TJH JKS HANSEN 36085 010402 APPROVED DATE 4/01

PLATE 1
REVISED DATE 1/01

6x B

EXHIBIT "C"

Legal description of Parcels restricted by this covenant.

EXHIBIT C

Legal Description:

A 1.23 ACRE PARCEL OF LAND, BEING A PORTION OF 'MARINA I', AS DESIGNATED FOR ECONOMIC DEVELOPMENT CONVEYANCE.

All that certain red property situate in Rancho Las Salinas, Monterey City Lands Tract No. 1, City of Marina, County of Monterey, State of California described as follows:

A portion of Parcel 1, as said Parcel 1 is shown and so designated on the map filed for record in Volume 23 of 'Surveys', at Page 91, Records of Monterey County, California, said portion being more particularly described as follows:

COMMENCING at the northernmost point of Parcel 9, as shown and so designated on the map filed for record in Volume 19 of 'Surveys', at Page 20, and more particularly described as point 59, being a 1" iron pip, tagged "RCE 15310"; thence North 17° 57' 34" East, 191.47 feet to a 1/2" rebar tagged "LS 3304"; thence North 10° 03' 31" West, 557.89 feet to a 1/2" rebar tagged "LS 3304"; thence North 67° 32' 34" East, 402.77 feet to the true point of beginning, being a set 1" iron pipe with brass tag "LS 4974"; thence

- 1) Northeasterly, along the arc of a curve to the left, concave to the northwest, the center of which bears North 22° 20' 31" West, 1340.00 feet, through a central angle of 15° 13' 54", 356.23 feet to a set mag nail with a 1 1/2" stainless steel washer stamped "LS 4974"; thence**
- 2) North 52° 25' 35" East, 318.71 feet to a set mag nail with a 1 1/2" stainless steel washer stamped "LS 4974"; thence**
- 3) Northeasterly, along the arc of a curve to the right, concave to the southeast, the center of which bears South 37° 34' 25" East, 2470.00 feet, through a central angle of 3° 22' 03", 145.17 feet to a set 1" iron pipe with brass tag "LS 4974" thence**
- 4) North 34° 12' 22" West, 56.85 feet to a set 1" iron pipe with brass tag "LS 4974"; thence**
- 5) South 63° 02' 13" West, 107.63 feet to a set 1" iron pipe with brass tag "CS 4974"; thence**
- 6) South 47° 05' 27" West, 119.26 feet to a set 1" iron pipe with brass tag "LS 4974"; thence**
- 7) South 53° 27' 41" West, 300.53 feet to a set 1" iron pipe with brass tag "LS 4374"; thence.**
- 8) South 59° 39' 25" West, 219.54 feet to a set 1" Iron pipe with brass tag "LS 4974"; thence**
- 9) North 71° 32' 47" East, 61.39 feet to a set 1" Iron pipe with brass tag "LS 4974"; thence**
- 10) South 22° 17' 58" East, 89.78 feet to the point of beginning.**

Containing 1.23 Acres, more or less

